



REQUEST FOR PROPOSALS

FOR

LEAD & COPPER COMPLIANCE PROGRAM MANAGEMENT

ISSUE DATE: APRIL 20, 2023

DUE DATE: MAY 04, 2023

1. INTRODUCTION

Pursuant to 2 C.F.R. 200.320(b)(2), Brunswick County (the “County”) is soliciting sealed competitive proposals to provide services associated with the development, implementation, and management necessary for the County to meet the requirements of the Lead and Copper Rule Revisions, as mandated by the Environmental Protection Agency (the “EPA”), and the EPA’s proposed Lead and Copper Rule Improvements.

On January 15, 2021, the EPA published the National Primary Drinking Water Regulations: Lead and Copper Rule Revisions (“LCRR”). The final rule became effective December 16, 2021. The EPA is also developing a new proposed rule known as the Lead and Copper Rule Improvements (“LCRI”) that will further strengthen the regulations. The EPA intends to promulgate the LCRI prior to October 16, 2024, and will require full compliance by that date.

2. PROJECT FUNDING AND REQUIREMENTS

Brunswick County has received an allocation of funds from the Coronavirus State and Local Fiscal Recovery Funds (the “Fiscal Recovery Funds”) established pursuant to Sections 602 and 603 of the Social Security Act, as added by Section 9901 of the American Rescue Plan Act of 2001 (“ARPA”). This project is being funded using Fiscal Recovery Funds.

In using such Fiscal Recovery Funds, Brunswick County must comply with the terms of ARPA, regulations issued by the U.S. Department of the Treasury (“Treasury”) governing the expenditure of monies distributed from the Fiscal Recovery Funds (including, without limitation, the Interim Final Rule (86 Fed. Reg. 26,786 (May 17, 2021) and Final Rule (87 Fed. Reg. 4,338 (January 27, 2022))), the Award Terms and Conditions applicable to the Fiscal Recovery Funds, and such other guidance as Treasury has issued or may issue governing the expenditure of monies distributed from the Fiscal Recovery Funds (collectively, the “Regulatory Requirements”); and

Pursuant to the Regulatory Requirements, Brunswick County must comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, which includes, without limitation, applicable provisions described in Appendix II to 2 C.F.R. Part 200, each of which is contained in this Request for Qualifications or in a Services Agreement in substantially the form attached hereto.

In accordance with the foregoing requirements, providers interested in being considered for this work must agree to strictly adhere to all terms and conditions contained herein and in the Services Agreement, as may be amended from time to time, as required by Treasury. Providers not agreeing to all terms and conditions are expressly prohibited from submitting a proposal for consideration.

3. SCOPE OF WORK

Brunswick County Public Utilities has approximately 63,000 water meters/services and approximately 1,149 miles of water mains consisting of cast iron, ductile iron, high density polyethylene, polyethylene, polyvinyl chloride, and asbestos cement pipe materials. Brunswick County has established the following objectives for this project. Any changes to the specifications or Scope of Work will be made in the form of an Addendum to this Request for Proposals and will be supplied to all known prospective providers and posted on the Brunswick County website. Notwithstanding the foregoing, providers will be responsible for ensuring that they have all addenda. Brunswick County may negotiate and refine the final Scope of Work with the selected provider. Brunswick County reserves the right to negotiate additional services with the selected provider at any time after the initial contract award.

It is anticipated that the Scope of Work will include the following tasks, without limitation:

- Lead Service Lateral (LSL) Inventory
- Identify “Lead-Status-Unknown” Service Laterals
- Develop a Lead Service Lateral Replacement Program
- Sampling Monitoring Program, including, without limitation, providing sampling kits and sample analysis.
- Public Education and Outreach Program, including, without limitation, providing pitchers and filters to affected customers.
- Technical Implementation and Support

The following outlines the expected tasks and deliverables associated with each of the above tasks.

Lead Service Lateral (LSL) Inventory

(Development of the inventory is required to be completed by October 16, 2024. Provider is required to maintain/update the inventory through December 31, 2026. Prior to December 31, 2026, the selected provider will be required to train County personnel to maintain/update the inventory).

The items under this task will identify possible known locations of lead service laterals still in use.

Development and implementation of the LSL Inventory is expected to include, but may not be limited to, the following:

- Develop LSL Inventory
- Using existing material data (as-built drawings, structure age, etc.) and provider’s expertise to predict probability of lead presence in service laterals.
- Perform review of records to determine which locations in the service area are most likely to have lead services. Methods such as noting service installations that occurred prior to 1985 that may contain lead solder, and excluding components installed after the year 2000, can be used to help determine the service areas that are likely to contain lead services.

- Develop and advise on validation strategy and best practices to verify line materials in the most cost-efficient manner.
- Develop and implement a data base of the LSL inventory.
- Provide the ability to track material of both private and public sides of the service laterals.
- Provide a cloud-based system for internal County users and approved third-party users to view and input material data by location. System should allow users to view results in a map.
- Provide the ability for field teams to input material data, including photos, directly into the software system via a mobile device.
- Provide data “clean up” support to gather, organize, and input appropriate data meeting inventory requirements and prediction capabilities.
- Provide a web-based map of service line data to be made available to the public on the County’s website.
- Provide the ability to create custom fields to track specific criteria as the County deems necessary.
- Provide the ability to export data for use with geographic information systems (GIS), water information management systems (WIMS), or other technology applications or reporting to regulators.
- Provide training to County staff for uploading, revising, and maintaining the web-based map.
- Provide training to County staff for the on-going management of the LSL database.

Identify “Lead-Status-Unknown” Service Laterals

This task shall develop a cost-effective solution to determine “lead-status-unknown” service laterals. This may include excavation of service laterals utilizing vacuum excavation to identify service lateral material trends, etc. Developing and implementing a strategy to determine the material of “lead-status-unknown” service laterals will be a key component of the LSL Inventory. Identifying the materials of “lead-status-unknown” service laterals is expected to include, but may not be limited to, the following tasks:

- Provide vacuum excavation to identify material trends in “lead status unknown” laterals.
- Develop and train County staff on a replacement and identification protocol if “lead-status-unknown” service laterals are found to be LSLs.
- Assist County staff in physically verifying the material of water service laterals.
- Develop a plan for “site closure” to verify that “lead-status-unknown” laterals do not contain lead within the service lateral.

Develop a Lead Service Lateral Replacement Program

(Development of the program is required to be completed by October 16, 2024. Provider is required to support the program through December 31, 2026.)

This task shall include the development of program(s) for the County and its contractors to replace any known or discovered lead service laterals in compliance with the LCRR and LCRI, as applicable. This task must take into consideration the rate of replacement required under the LCRR

and LCRI, as applicable, as well as developing a plan for the County to implement the logistics. Developing a lead service lateral replacement program is expected to include, but may not be limited to, the following tasks:

- Develop a program strategy and framework to prioritize replacement of lead service laterals, and best practices for implementation with input and approval by County.
- Assist County with creating a lead service lateral replacement program and submitting the plan to the State.
- Assist County in responding to any questions or comments from the State and EPA regarding the proposed lead service lateral replacement program.
- Prepare cost estimates for lead service lateral replacement to be included in County's Capital Improvement Plan (CIP) budget.
- Provide communication guidance, and campaign templates for public communication.
- Develop a program and associated standard operating procedures (SOP) to track service lateral replacement progress and provide real-time dashboards, exportable reports, etc.
- Provide workflow management templates and standard operating procedures to track all program data, facilitate approvals, and reporting of progress.
- Develop a program to track resident communications, such as letters and phone calls.
- Develop a program and associated SOPs to source, distribute, track, and order pitchers/filters when lead laterals are identified and replaced on both an agreed upon schedule and an ad hoc basis.

Sampling Monitoring Program

(Development of the program, and completion of initial required sampling, is required to be completed by October 16, 2024. Provider is required to support the program through December 31, 2026.)

The provider shall develop a sampling monitoring plan that will be provided to the County and will be in accordance with the LCRR and LCRI, as applicable. The County expects the selected provider to develop a program to manage sampling, sample kit distribution, and sampling results across the service area and within compliance of the LCRR and LCRI, as applicable. Developing a sampling monitoring program is expected to include, but may not be limited to, the following tasks:

- Create a database to track samples with the ability to show all historical and future samples and results for a given location.
- Distinguish by type of sample location (profile, routine compliance, school/childcare, special customer request).
- Create sampling plans for the County based on the LCRR and LCRI, as applicable.
- Provide 1st and 5th Liter sample result tracking and reporting for both LSL and non-LSL sites pursuant to the requirements of the LCRR and LCRI, as applicable.
- Track and adjust tier sites.
- Assist the County in identifying schools and childcare facilities that are required to be sampled.

- Support school and childcare facility sampling for both the LCRR and LCRI, as applicable, standard requirements and EPA 3Ts standard requirements.
- Provide an SOP to track fixture level sampling, remediation data, and sampling of all fixtures of a school or childcare facility.
- Manage and perform all the samplings from the customer, laboratory, and school/childcare facility.
- Create a resident communications database for the County's use, to track notifications (i.e., letters, phone calls) to residents, regulatory agencies, etc.
- Provide an SOP for reporting results to customers and primacy agencies within EPAs required timeframes depending on the results obtained.
- Create a database to order, track, and ship sampling kits.
- Provide an SOP to import and export data from alternate County software systems like GIS, and Muni-Link.
- Assist the County in tracking and addressing customer issues, provide educational materials, and manage lab coordination.
- Review County's current corrosion control program and make recommendations for any needed revisions to the program in order to maintain compliance with the LCRR and LCRI, as applicable.

Sampling Kits and Sample Analysis

- Provide EPA-approved sampling kits.
- Provide consumer-friendly sampling kits in response to customer requests, compliance, or other direct resident sampling requests according to an approved sampling plan.
- Review the existing Lead and Copper Sampling Plan for each water system.
- Provide recommendations for a revised Sampling Plan that will include targeted sampling sites based on the LCRR and LCRI requirements, as applicable.
- Assist County in identifying schools and daycare facilities that need to be sampled.
- Drop ship sampling kits, including sampling instructions, directly to customers (account holders) and be financially responsible for all charges associated with shipping.
- Create a database to order, track, and ship sampling kits.
- Create a resident communications database for County use to track notifications (i.e., letters, phone calls) to residents, regulatory agencies, etc.
- Manage all shipping and logistics of sampling kits to the customer, laboratory, and school/childcare facility.
- Provide multiple sampling kit options including 1L bottle and 1st/5th L bottle kits that meet the LCRR and LCRI requirements, as applicable.
- Provide pre-labeled sample bottles for school/childcare facility sampling and other locations, as needed, and be financially responsible for all charges associated with shipping and sampling.
- Provide an SOP for reporting results to customers and primary agencies within EPA's required timeframes depending on the results obtained.
- Laboratory must be certified for a Lead and Copper Analysis method approved by the state of North Carolina.

Public Education and Outreach Program

This task shall include developing and providing a public outreach program for the County to implement. Included in this program will be the necessary data packets required under the LCRR and LCRI, as applicable, as well as any functional replacement items and the timeframes required for customers (i.e., account holders, schools, childcare facilities, etc.) during all possible LSL replacement activities the County may undertake. Developing and implementing a public education and outreach program shall include, but may not be limited to, the following tasks:

- Assist the County in developing a plan to meet all EPA requirements to notify customers.
- Develop an SOP for providing the required notification (individual customer and entire water system as required in the LCRR and LCRI, as applicable).
- Assist in the development of outreach, educational, and promotional materials for each phase of Brunswick County's Compliance Program (i.e., inventory, replacement, sampling, etc.).
- Assist the County in the development of a program to provide training for school and childcare facilities to collect samples.
- Develop an SOP for providing pitcher filters/cartridges to each customer affected by the LSL Replacement Program.
- Assist the County in selecting the appropriate pitcher/filter provider, to include (but may not be limited to) development of an appropriate competitive bidding document in accordance with applicable law for procurement of pitchers/filters (subject to prior review and approval of County), reviewing proposals, etc.
- Develop and implement a program and procedure for notifying residents that may have lead service laterals, to include a way to track and provide any required materials (i.e., pitchers, filters, etc.).
- Develop and implement a public education and outreach assistance program.

Technical Implementation and Support

(Develop, Implement, and Maintain/Update through December 31, 2026)

This task shall involve training County staff to access and manage a database of data collected for lead service laterals and sample results from compliance activities related to the LCRR and LCRI, as applicable. The provider shall also develop standard database functions to streamline communication between customers and departments within the County. Development of a technical implementation and support team is expected to include, but may not be limited to, the following tasks:

- Provide a data management solution within three (3) months of contract signature date. The solution shall include a tracking compliance database as well as training County staff to manage the tracking database in accordance with the LCRR and LCRI, as applicable.
- Provide a designated support team to be a day-to-day point of contact supporting the County's program needs.

- The database must allow the County to manage and build the database using its own collected data and sampling information. Additionally, provide training to the County on the use of this database.
- Provide technical support to the County in the use of the data management solution. Technical support should be through the designated support team.
- Provide a schedule for training the County's operational and technical staff to adequately use the features of the systems design to meet the County's needs.
- Provide documentation that the County will retain ownership of the data collected and a clear description of how the County may acquire the data, at no additional cost, should the County choose to discontinue services.
- Identify future funding sources (Federal and/or State) to assist private property owners with replacement of their service laterals. Assist the County in applying for such funds through loan and/or grant applications, etc.
- Assist in identifying service line material, by encouraging residents to take an online survey or have a consultant staff member conduct an assessment. Also, encourage them to coordinate with the contractor to replace their service line.
- Coordinate with the EPA and State for interpreting requirements, review of data, etc. and assist the County in addressing comments from the EPA and State on submitted data, etc.
- Assist the County with developing RFQs, RFPs, contract documents, etc. to select additional consultants and/or contractors to assist with the implementation of the various programs such as replacement of lead lines, corrosion treatment program, all in accordance with applicable law and subject to prior review and approval by County.
- Develop and implement a software solution that will provide various County departments with the collected data. The software solution shall be able to track public outreach efforts, notify the various departments, etc.
- Provide training and training materials (i.e., procedures) for utilizing the software.

4. PROPOSAL DEADLINE AND SUBMISSION REQUIREMENTS

4.1 All proposals must be received by Brunswick County by May 04, 2023, at 4:30 pm ET.

4.2 All proposals must include the following:

- The proposal title and due date and time.
- A cover letter/letter of intent on provider's letterhead, signed by an authorized representative of the provider, expressly agreeing to Brunswick County's terms and conditions contained in this Request for Proposals and its attachments. The provider's name or company name, address, and telephone number.
- The name, address, and telephone number of company representatives with the authority to answer questions or provide clarification regarding the proposal's contents.
- A list of key personnel to be assigned to perform the services and each person's qualifications. Personnel should possess relevant and diverse knowledge and expertise in their respective fields.

- The names of any and all subcontractors expected to perform services in connection with the project and their qualifications. Include the estimated percentage of work that each subcontractor is expected to perform. **Brunswick County reserves the right to accept or reject any proposed subcontractor. Any approved subcontractor must also agree to strictly adhere to all terms and conditions of this Request for Proposals and the Services Agreement attached hereto.**
- A detailed Form of Proposal in substantially the form attached hereto and incorporated herein by reference.
- A full description of services and processes that will be implemented and ongoing to complete the project in the most efficient, timely and comprehensive manner. The description should include a detailed implementation plan and project schedule outlining the primary tasks, estimated hours, responsibility, major deliverables and timing, including an estimated start date. Additional project deliverables are set forth below.
- Any assistance requirements from Brunswick County.
- A detailed company description and history, including the areas of expertise related to the project.
- A reference list of at least three (3) current projects or projects completed within the past twenty-four (24) months for projects of similar size and scope, including the name and telephone number of a contact person for each reference listed.
- Certificate of Insurance as evidence the provider meets the County's Minimum Insurance Requirements attached hereto.

Provider shall provide documentation sufficient to clearly demonstrate that their firm meets or exceeds the requirements set forth in this Request for Proposals. Failure to provide such documentation may result in the proposal being deemed non-responsive.

In addition to the foregoing, Brunswick County reserves the right to request financial information for any provider, in order to support the viability of the service provider.

Those interested should submit three (3) hard copies and one (1) electronic copy on USB drive of the proposal. Sealed proposals may only be mailed or hand delivered to the following:

Mail: Parul Baranwal
P. O. Box 249
Bolivia, NC 28422

Hand Delivery: Parul Baranwal
250 Grey Water Rd. NE
Supply, NC 28462

Proposals must be received no later than 4:30 pm ET on May 04, 2023. Brunswick County will not be responsible for the failure of any mail or delivery service to deliver a proposal prior to the stated date and time. Regardless of the manner of submission, any proposal received after the stated date and time will not be considered. Incomplete proposals or proposals inconsistent with the required format may be disqualified from consideration.

5. EXPENSES

Brunswick County will not be responsible for any costs or expenses incurred by the provider in submitting a proposal or for any other activities associated with this procurement. Further, Brunswick County reserves the right to cancel the work described herein prior to issuance and acceptance of any contractual agreement even if the Board of Commissioners has formally accepted the recommendation.

6. RIGHT TO SUBMITTED PROPOSALS AND SUPPORTING DOCUMENTS

All written correspondence, proposals and supporting documents received by Brunswick County in connection with this Request for Proposals will become the property of Brunswick County. Brunswick County reserves the right to use any ideas in a proposal or supporting documents regardless of whether the proposal is selected.

7. QUESTIONS/ADDENDA

Questions or requests for further information regarding this Request for Proposals shall be submitted in writing to the attention of Parul Baranwal no later than April 27, 2023, at 4:30 pm ET. A copy of all questions, further clarifications and answers will be made in the form of an Addendum to this Request for Proposals and will be provided to all known providers and posted on the County's website. Notwithstanding the foregoing, providers are responsible for ensuring that they have all addenda.

Providers are expressly prohibited from contacting any Brunswick County official or employee regarding this Request for Proposals, except in the manner noted in this section. A violation of this provision is grounds for the immediate disqualification of the provider.

8. FORM OF AGREEMENT

In addition to the terms and conditions contained in this Request for Proposals, by submitting a proposal, provider, if selected, agrees to enter into and be bound by the provisions of a Services Agreement (ARPA Funding) in substantially the form attached hereto and incorporated herein by reference. To the extent that any of the terms of this Request for Proposals and the terms of the Services Agreement (ARPA Funding) conflict, the terms of the Services Agreement (ARPA Funding) shall prevail. No work shall commence until an agreement has been fully executed by the parties. Unless otherwise approved by Brunswick County, the provider must begin performing services within thirty (30) days after an agreement is signed.

9. INSURANCE

Provider, and any of its approved subcontractors, must procure and maintain in full force and effect during the term of any agreement with Brunswick County, or the renewal of any agreement with Brunswick County, the insurance coverage set forth in the Minimum Insurance Requirements attached hereto and incorporated herein by reference.

In the event provider, or any of its approved subcontractors, fails to maintain insurance as outlined herein, Brunswick County may, at its option, obtain the required insurance at the expense of the provider.

10. PROPOSAL CONDITIONS

Submission of a proposal indicates explicit acceptance by the provider of the terms and conditions contained in this Request for Proposals and any attachments hereto. Brunswick County reserves the right to reject, without prejudice or explanation, any or all proposals. Brunswick County reserves the right to waive informalities or to amend the specifications of this Request for Proposals and request new proposals at any time prior to the award of a contract. All decisions of Brunswick County shall be final and binding.

The provider shall supply the following:

- A single point of contact through proposal acceptance. Brunswick County will communicate solely through this contact regarding all issues relating to the proposal through acceptance.
- A single Project Manager, after acceptance, dedicated and available for the entire duration of the project. The Project Manager may only be replaced upon approval by, or at the request of Brunswick County. At a minimum, the provider's Project Manager shall be responsible for oversight and management of the Scope of Work as outlined above.

11. RESERVATION OF RIGHTS

11.1 Rejection

A proposal may be rejected if the provider fails to:

- Submit the proposal in the format specified.
- Supply the minimum information requested.
- Submit all addenda, addenda responses and templates.
- Submit the proposal by the date and time required.
- Submit a cost proposal as per attached Form of Proposal.
- Provide truthful and accurate information in the proposal.

11.2 No Acceptance

Brunswick County reserves the exclusive right to reject any or all proposals, to waive any informalities or technical defects in proposals, and to accept any proposal deemed most favorable to Brunswick County.

11.3 Competency of Provider

Brunswick County shall make such investigation as it deems necessary to determine the ability of the provider to perform the work, and provide the services required by this Request for Proposals. Upon request by Brunswick County, the provider shall furnish satisfactory evidence that it has the necessary facilities, ability and financial resources to fulfill the specifications and conditions of the proposal.

12. AWARD

Brunswick County reserves the right to award a contract, based on initial proposals received from providers, without discussion and without conducting further negotiations. Brunswick County may also, in its sole discretion, initiate further discussions with providers that it deems to fall within a competitive range. Proposals will be evaluated by an evaluation committee comprised of County staff using a scoring system and the evaluation criteria set forth below to determine the ranking of providers. Award shall be made to the provider who is deemed to have submitted the most advantageous proposal, taking into consideration the following criteria and criteria weighting:

RFP Evaluation Criteria	Weighting
<i>Company Background and Project Experience</i> <ul style="list-style-type: none">• Understanding of the drinking/potable water distribution system, sampling/testing guidelines, and other relevant policies and procedures, including, without limitation, the LCRR and LCRI, as applicable.• The proposed work plan and approach, along with an understanding of the Scope of Work set forth herein, to assist the County with complying with revisions to the Lead and Copper Rule.	20%
<i>Project Team & Availability of Resources</i> <ul style="list-style-type: none">• Highlight of the qualifications and relevant experience of the firm and its staff.• Work force allocation.• Optional cost-effective tasks proposed or recommended.	15%
<i>Project Approach</i> <ul style="list-style-type: none">• The proposed schedule for the work and services, as well as the targeted milestones and deliverables, is outlined.• The project management approach, quality assurance/quality control plan, communication with the County's project manager/staff, and public outreach efforts are detailed.	15%

<p><i>Cost Proposal</i></p> <ul style="list-style-type: none"> • Submission of properly itemized bid form as attached covering the additional work and/or the work to be deleted. This proposal will be itemized for the various components of work and segregated by labor, material, and equipment in a detailed format satisfactory to County. • Details to be submitted will include detailed line-item estimates showing detailed materials quantity take-offs, material prices by item and related labor/service hour pricing information. • Creating action plans, auditing and revising current processes, organizing data, and most importantly, starting the process of creating and validating the Lead Service Line inventory are crucial steps to guarantee compliance with all the necessary requirements. 	30%
<p><i>Computer Software</i></p> <ul style="list-style-type: none"> • The utilization of various software components to consolidate all relevant data elements, including, without limitation, customer information, service lines, water quality, etc., is described in order to provide a comprehensive, real-time view of compliance requirements. • Software solutions specifically designed to manage LCRR- and LCRI-related programs, such as creating a web-based inventory of LSL or monitoring the advancement of a full LSL replacement project, including, without limitation, the following components: <ul style="list-style-type: none"> ▪ A cloud-based platform. ▪ Web and mobile applications to provide public access to inventory database. ▪ The capability to send notifications and share data with residents and stakeholders. ▪ Built-in machine learning to aid in tasks such as material type identification. ▪ Water sample tracking functionality. ▪ Integration with databases such as GIS or computerized maintenance management systems (CMMS). 	20%

The contract, if awarded, shall be on a fixed price or cost reimbursement basis only. Brunswick County shall not be deemed to have finally selected a provider until a contract has been successfully negotiated and signed by both parties.

13. NON-DISCLOSURE OF INFORMATION

Provider and its agents shall treat all data and information associated with this Request for Proposals, including, without limitation, the Request for Proposals, all reports, recommendations, specifications and other data as confidential. Provider and its agents shall not disclose or communicate any information to a third party or use such information in advertising, propaganda, or in another job or jobs, unless prior written consent is obtained from Brunswick County.

14. NORTH CAROLINA PUBLIC RECORDS

All proposals received by Brunswick County shall be considered public information subject to lawful disclosure under North Carolina Public Records Law. Any proposal material deemed by the provider to constitute either proprietary or trade secret material shall be designated as such, and each page or section of a page containing such material shall be so marked by the provider. In addition, it shall be the sole responsibility of the provider to demonstrate to a court of competent jurisdiction that their designation is proper. Brunswick County shall not make public any material determined by a court of competent jurisdiction to be proprietary or trade secret. Provider hereby agrees to indemnify and hold Brunswick County harmless from any and all claims, suits, damages, penalties or expenses arising out of provider's proprietary or trade secret designation.

15. PROJECT DELIVERABLES

Provider shall complete the following:

- Weekly or bi-weekly project conference calls to be held throughout the project, with meeting agendas and minutes provided by the provider.
- Ongoing action item list maintained by the provider.
- Template and procedure for formal reporting of issues provided by the provider.
- Final Report that summarizes the engagement.

16. ADDITIONAL SERVICES

Brunswick County reserves the right to negotiate additional services with provider at any time after the initial contract award.

17. DISCLAIMER OF FEDERAL GOVERNMENT OBLIGATIONS OR LIABILITY

The provider, and any subcontractors, acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of a contract in connection with this Request for Proposals, absent the express written consent by the Federal Government, the Federal Government is not a party to this proposal or any subsequent agreement and shall not be subject to any obligations or liabilities to the provider, or any other party (whether or not a party to this proposal or subsequent agreement) pertaining to any matter resulting from the proposal or subsequent agreement. It is further agreed that this clause shall be included in each subcontract and shall not be modified, except to identify the subcontractor who will be subject to its provision.

18. COMPLIANCE WITH FEDERAL LAWS, REGULATIONS, AND EXECUTIVE ORDERS

Provider hereby acknowledges that federal financial assistance will be used to fund all or a portion of this procurement. As such, provider will comply with all applicable federal laws, regulations, executive orders, federal government policies, procedures, directives, and the terms and conditions

of the funding award. Provider further acknowledges that funding is contingent upon compliance with the foregoing.

19. FEDERAL UNIFORM GUIDANCE

Funding for this procurement is from a federal source; therefore, the following provisions also apply, pursuant to 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II (as applicable):

- Equal Employment Opportunity (41 C.F.R. Part 60)
- Davis-Bacon Act (40 U.S.C. 3141-3148)
- Copeland “Anti-Kickback” Act (40 U.S.C. 3145)
- Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)
- Clean Air Act (42 U.S.C. 7401-7671q)
- Federal Water Pollution Control Act (33 U.S.C. 1251-1387)
- Debarment and Suspension (Executive Orders 12549 and 12689)
- Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)
- Procurement of Recovered Materials (2 C.F.R. § 200.322)
- Record Retention Requirements (2 C.F.R. § 200.324)

20. UTILIZATION OF SMALL BUSINESS CONCERNS

Pursuant to 48 C.F.R. § 52.219-8:

- “(a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.
- (b) The provider hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The provider further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the provider’s compliance with this clause.

(c) *Definitions.* As used in this contract –

HUBZone small business concern means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

Service-disabled veteran-owned small business concern –

- (1) Means a small business concern -
 - (i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
 - (ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.
- (2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

Small business concern means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

Small disadvantaged business concern means a small business concern that represents, as part of its offer that—

- (1)
 - (i) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, subpart B;
 - (ii) No material change in disadvantaged ownership and control has occurred since its certification;
 - (iii) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
 - (iv) It is identified, on the date of its representation, as a certified small disadvantaged business in the CCR Dynamic Small Business Search database maintained by the Small Business Administration, or
- (2) It represents in writing that it qualifies as a small disadvantaged business (SDB) for any Federal subcontracting program, and believes in good faith that it is owned and controlled by one or more socially and economically disadvantaged individuals and meets the SDB eligibility criteria of 13 CFR 124.1002.

Veteran-owned small business concern means a small business concern –

- (1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
- (2) The management and daily business operations of which are controlled by one or more veterans.

Women-owned small business concern means a small business concern –

- (1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
- (2) Whose management and daily business operations are controlled by one or more women.

(d)

- (1) Providers acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a small disadvantaged business concern, or a women-owned small business concern.
- (2) The provider shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the System for Award Management database or by contacting the SBA. Options for contacting the SBA include –
 - (i) HUBZone small business database search application Web page at http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm or <http://www.sba.gov/hubzone>;
 - (ii) In writing to the Director/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington DC 20416; or
 - (iii) The SBA HUBZone Help Desk at hubzone@sba.gov.”

21. ENERGY CONSERVATION REQUIREMENTS

Pursuant to 42 U.S.C. 6321 et seq., provider agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

22. AMERICANS WITH DISABILITIES ACT (ADA)

Provider agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC § 12101 et seq.; Section 504 of the Rehabilitation Act of

1973, as amended, 29 USC § 794; 49 USC § 5301(d); and any implementing requirements of the Federal Government. These regulations provide that no handicapped individual, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity included in or resulting from this proposal.

23. PRIVACY ACT

Provider agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. The provider agrees to obtain the express consent of the Federal Government before the provider or its employees operate a system of records on behalf of the Federal Government. The provider understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

Provider also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed, in whole or in part, with Federal assistance.

24. DRUG-FREE WORK PLACE

Provider shall adhere to the Federal Drug Free Workplace requirements as outlined in 2 C.F.R. § 182. Provider shall make good faith efforts to maintain a drug-free workplace, publish a workplace statement and establish drug-free awareness programs for employees. Provider should take action concerning employees who are convicted of violating drug statutes in the workplace. Provider shall contact Brunswick County if provider cannot adhere to the requirements of the Federal Regulations noted above. Failure to comply with said provisions shall be considered a breach of contract.

25. CERTIFICATION

Provider hereby certifies that it has carefully examined this Request for Proposals, the Services Agreement (ARPA Funding), and all other attachments hereto, that it understands and accepts all terms and conditions and the scope of work, and that it has knowledge and expertise to complete the project. By submitting a proposal, provider certifies that its proposal is in all respects fair and without collusion or fraud.

FORM OF AGREEMENT

NORTH CAROLINA

BRUNSWICK COUNTY

SERVICES AGREEMENT [ARPA Funding]

THIS SERVICES AGREEMENT (hereinafter referred to as the “Agreement”) is made and entered into by and between Brunswick County, a body politic and corporate of the State of North Carolina, (hereinafter referred to as “County”), party of the first part, and {Vendor Name}, (hereinafter referred to as “Provider”), party of the second part.

WHEREAS, County has received an allocation of funds from the Coronavirus State and Local Fiscal Recovery Funds (the “Fiscal Recovery Funds”) established pursuant to Sections 602 and 603 of the Social Security Act, as added by Section 9901 of the American Rescue Plan Act of 2021, Pub. L. No. 117-2 (“ARPA”), as amended; and

WHEREAS, County intends to fund this Agreement, in whole or in part, using monies received from the Fiscal Recovery Funds; and

WHEREAS, in using such funds, County must comply with the terms of ARPA, regulations issued by the U.S. Department of the Treasury (“Treasury”) governing the expenditure of monies distributed from the Fiscal Recovery Funds (including, without limitation, the Interim Final Rule (86 Fed. Reg. 26,786 (May 17, 2021) and Final Rule (87 Fed. Reg. 4,338 (January 27, 2022))), the Award Terms and Conditions applicable to the Fiscal Recovery Funds, and such other guidance as Treasury has issued or may issue governing the expenditure of monies distributed from the Fiscal Recovery Funds (collectively, the “Regulatory Requirements”); and

WHEREAS, pursuant to the Regulatory Requirements, County must comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury has determined or may determine are inapplicable to the Fiscal Recovery Funds; and

WHEREAS, pursuant to 2 C.F.R. § 200.327, County must include within this Agreement applicable provisions described in Appendix II to 2 C.F.R. Part 200, each of which is contained herein; and

WHEREAS, County shall not enter into this Agreement or make any distributions of funds to Provider using monies from the Fiscal Recovery Funds absent Provider’s agreement and adherence to each term and condition contained herein.

NOW THEREFORE, Provider and County do mutually agree as follows:

1. DEFINITIONS

Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to them below:

- (1) “Administering Agency” shall have the meaning specified in 41 C.F.R. § 60-1.3.
- (2) “Applicant” shall have the meaning specified in 41 C.F.R. § 60-1.3, which is provided here for ease of reference: (“An applicant for Federal assistance involving a construction contract, or other participant in a program involving a construction contract as determined by regulation of an Administering Agency. The term also includes such persons after they become recipients of such Federal assistance.”).
- (3) “Laborer” or “Mechanic” shall have the meaning specified in 29 C.F.R. § 5.2(m), which is provided here for ease of reference: (“The term *laborer* or *mechanic* includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term *laborer* or *mechanic* includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in part 541 of [Title 40 of the United States Code] are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties, and who do not meet the criteria of [Title 40 of the United States Code], are laborers and mechanics for the time so spent.”).
- (4) “Subcontract” shall mean any agreement entered into by a Subcontractor to furnish supplies or services for the performance of this Agreement or a Subcontract. It includes, but is not limited to, purchase orders and changes and modifications to purchase orders.
- (5) “Subcontractor” shall mean an entity that receives a Subcontract.
- (6) “Tier” shall have the meaning indicated in 2 C.F.R. Part 180 and illustrated in 2 C.F.R. Part 180, Appendix II.

2. SERVICES; FEES

The services to be performed under this Agreement (hereinafter referred to collectively as “Services”) and the agreed upon fees for said Services are set forth on Exhibit “A” attached hereto.

Any exhibits or attachments referenced herein are hereby incorporated by reference and made a part of this Agreement. Any conflict between the language in an exhibit or attachment and the main body of this Agreement shall be resolved in favor of the main body of this Agreement.

3. TERM OF AGREEMENT; TERMINATION

- (1) **TERM.** The term of this Agreement begins on {Effective Date} (the “Effective Date”) and continues in effect until {Expiration Date}, unless extended or sooner terminated as provided for herein. Notwithstanding the foregoing, pursuant to Sections 602(c)(1) and 603(c)(1) of ARPA, all Fiscal Recovery Funds must be obligated or costs incurred for the use of such funds between March 3, 2021, and December 31, 2024, and all Fiscal Recovery Funds must be fully expended by December 31, 2026 (hereinafter referred to as the “Period of Performance”). A cost shall be considered to have been incurred if a contract, agreement, or obligation with respect to such cost has been entered into by December 31, 2024. In accordance with the foregoing, in no event may the term of this Agreement be extended beyond the expiration of the Period of Performance.
- (2) **TERMINATION.** County may terminate this Agreement at any time without cause by giving sixty (60) days’ written notice to Provider. As soon as practicable after receipt of a written notice of termination without cause, Provider shall submit a statement to County showing in detail the work performed under this Agreement through the effective date of termination. County may terminate this Agreement for cause by giving written notice of a breach of the Agreement. Provider shall have fifteen (15) days to cure the breach following receipt of the notification. Failure to cure the breach within the fifteen (15) days shall result in the immediate termination of the Agreement. Notwithstanding the foregoing, County may terminate this Agreement immediately and without notice to Provider if Provider becomes insolvent, makes or has made an assignment for the benefit of creditors, is the subject of proceedings in voluntary or involuntary bankruptcy instituted on behalf of or against Provider, or has a receiver or trustee appointed for substantially all of its property, or if Provider allows any final judgment to stand against it unsatisfied for a period of forty-eight (48) hours.

4. NONAPPROPRIATION

If the Board of County Commissioners does not appropriate the funding needed by County to make payments under this Agreement for a given fiscal year, County will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, County will promptly notify Provider of the non-appropriation and this Agreement will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by County which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement.

5. COMPENSATION

County agrees to pay fees as specified in Exhibit “A” or as set out above for the Services satisfactorily performed in accordance with this Agreement. Unless otherwise specified, Provider shall submit monthly invoices to County and include detail of all Services delivered or performed under the terms of this Agreement. County shall pay all undisputed and properly completed invoices within thirty (30) days of receipt. Notwithstanding the foregoing, County will not pay

late fees on any charges under this Agreement. If County disputes any portion of the charges on any invoice received from Provider, County shall inform Provider in writing of the disputed charges. Once the dispute has been resolved, Provider shall re-invoice County for the previously disputed charges, and, per any resolution between County and Provider, County shall pay those charges in full at that time. No advance payment shall be made for the Services to be performed by Provider under this Agreement.

6. INDEPENDENT CONTRACTOR

Both County and Provider agree that Provider shall act as an independent contractor and shall not represent itself as an agent or employee of County for any purpose in the performance of its duties under this Agreement. Provider represents that it has or will secure, at its own expense, all personnel required in performing the Services under this Agreement. Accordingly, Provider shall be responsible for payment of all federal, state and local taxes arising out of its activities in accordance with this Agreement, including, without limitation, federal and state income tax, social security tax, unemployment insurance taxes and any other taxes or business license fees as required. Provider shall not be entitled to participate in any plans, arrangements or distributions by County pertaining to or in connection with any pension, stock, bonus, profit sharing or other benefit extended to County employees.

In the event the Internal Revenue Service should determine that Provider is, according to Internal Revenue Service guidelines, an employee subject to withholding and social security contributions, then Provider hereby acknowledges that all payments hereunder are gross payments, and Provider is responsible for all income taxes and social security payments thereon.

7. PROVIDER REPRESENTATIONS

- (1) Provider is a duly organized entity or corporation qualified to do business and in good standing under the laws of the State of North Carolina;
- (2) Provider has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;
- (3) No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for Provider to enter into and perform its obligations under this Agreement;
- (4) Provider shall not violate any agreement with any third party by entering into or performing the Services under this Agreement;
- (5) Provider will perform all Services in conformity with the specifications and requirements of this Agreement;
- (6) The Services provided by Provider under this Agreement will not violate, infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party, or any other third-party rights (including without limitation non-compete agreements);

- (7) Provider shall exercise reasonable care and diligence when performing the Services hereunder and will ensure that it adheres to the highest generally accepted standards in the industry when performing said Services;
- (8) Provider acknowledges that if any specific licenses, certifications or related credentials are required in its performance of the Services, it will ensure that such credentials remain current and active and not in a state of suspension or revocation; and
- (9) Provider shall ensure that whenever its employees or agents are on County property, they will strictly abide by all instructions and directions issued by County with respect to rules, regulations, policies and security procedures applicable to work on County's premises. Such rules, regulations, policies and security procedures shall include, but not be limited to: (i) not possessing any controlled substances; (ii) smoking only in designated smoking areas, if any; and (iii) not possessing weapons, except for weapons possessed by law enforcement officials.

8. COMPLIANCE WITH FEDERAL LAWS, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgement that federal financial assistance may be used to fund all or a portion of the Agreement. Provider will comply with all applicable federal laws, regulations, executive orders, federal government policies, procedures, and directives.

9. DAMAGE TO EQUIPMENT, FACILITIES, PROPERTY OR DATA

Provider shall be solely responsible for any damage to or loss of County's equipment, facilities, property and/or data arising out of the negligent or willful act or omission of Provider or its subcontractors. In the event that Provider causes damage to County's equipment or facilities, Provider shall, at its own expense, promptly repair or replace such damaged items to restore them to the same level of functionality that they possessed prior to such damage.

10. NON-ENDORSEMENT AND PUBLICITY

County is not endorsing Provider or its Services, and Provider is not permitted to reference this Agreement or County in any manner without the prior written consent of County. Notwithstanding the foregoing, the parties agree that Provider may list County as a reference in response to requests for proposals and may identify County as a customer in presentations to potential customers.

11. NON-EXCLUSIVITY

Provider acknowledges that County is not obligated to contract solely with Provider for the Services covered under this Agreement.

12. DIVESTMENT FROM COMPANIES THAT BOYCOTT ISRAEL

Provider hereby certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. § 147-86.81.

13. BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352 (AS AMENDED)

- (1) Provider certifies to County, and Provider shall cause each Tier below it to certify to the Tier directly above such Tier, that it has not used and will not use federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Provider shall, and shall cause each Tier below it, to disclose any lobbying with non-federally appropriated funds that takes place in connection with obtaining any federal award. Such disclosures (to be set forth on Standard Form-LLL, contained in 31 C.F.R. Part 21, Appendix B) shall be forwarded from Tier to Tier up to County, which will, in turn, forward the certification(s) to Treasury. Provider shall cause the language of this section to be included in all Subcontracts. This certification is a material representation of fact upon which County has relied when entering into this Agreement, and all liability arising from an erroneous representation shall be borne solely by Provider.
- (2) Providers that bid or apply for a contract exceeding \$100,000 (including this Agreement, if applicable) also must file the required certification with County.
- (3) Provider also shall cause any Subcontractor with a Subcontract (at any Tier) exceeding \$100,000 to file with the Tier above it the required certification.

14. PROCUREMENT OF RECOVERED MATERIALS

- (1) The provisions of this section shall apply if: (1) this Agreement involves the purchase of an item designated by the Environmental Protection Agency (“EPA”) in 40 C.F.R. Part 247 that exceeds \$10,000, or (2) the total value of such designated items acquired during County’s preceding fiscal year exceeded \$10,000.
- (2) In the performance of this Agreement, Provider shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired –
 - i. Competitively within a timeframe providing for compliance with the Agreement performance schedule;
 - ii. Meeting Agreement performance requirements; or
 - iii. At a reasonable price.

- (3) Information about this requirement, along with the list of EPA-designated items, is available on EPA's website.
- (4) Provider also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

15. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES

- (1) *Definitions.* Unless otherwise defined in this Agreement, capitalized terms used in this section shall have the meanings ascribed to them below:
 - i. *Backhaul* means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).
 - ii. *Covered Foreign Country* means the People's Republic of China.
 - iii. *Covered Telecommunications Equipment or Services* means (a) telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); (b) for the purpose of public safety, security of federal government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); (c) telecommunications or video surveillance services provided by such entities or using such equipment; or (d) telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a Covered Foreign Country.
 - iv. *Critical Technology* means (1) defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations; (2) items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations and controlled (a) pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology, or (b) for reasons relating to regional stability or surreptitious listening; (3) specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities); (4) nuclear facilities, equipment, and material covered by part 110 of title

10, Code of Federal Regulations (relating to export and import of nuclear equipment and material); (5) select agents and toxins covered by part 331 of title 7, Code of Federal Regulations; part 121 of title 9 of such Code; or part 73 of title 42 of such Code; or (6) emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. § 4817).

- v. *Interconnection Arrangements* means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.
- vi. *Roaming* means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.
- vii. *Substantial or Essential Component* means any component necessary for the proper function or performance of a piece of equipment, system, or service.
- viii. *Telecommunications Equipment or Services* means telecommunications or video surveillance equipment or services, such as, but not limited to, mobile phones, land lines, internet, video surveillance, and cloud services.

(2) *Prohibitions.*

- i. Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after August 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
- ii. Unless an exception in paragraph (3) of this section applies, Provider and its Subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds (including, without limitation, Fiscal Recovery Funds) received from a federal government to:
 - a. Procure or obtain any equipment, system, or service that uses Covered Telecommunications Equipment or Services as a Substantial or Essential Component of any system, or as Critical Technology of any system;
 - b. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses Covered Telecommunications Equipment or Services as a Substantial or Essential Component of any system, or as Critical Technology of any system;
 - c. Enter into, extend, or renew contracts with entities that use Covered Telecommunications Equipment or Services as a Substantial or Essential Component of any system, or as Critical Technology as part of any system;

or

- d. Provide, as part of its performance of this Agreement, Subcontract, or other contractual instrument, any equipment, system, or service that uses Covered Telecommunications Equipment or Services as a Substantial or Essential Component of any system, or as Critical Technology as part of any system.

(3) *Exceptions.*

- i. This clause does not prohibit Provider from providing:
 - a. A service that connects to the facilities of a third-party, such as Backhaul, Roaming, or Interconnection Arrangements; or
 - b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- ii. By necessary implication and regulation, the prohibitions also do not apply to:
 - a. Covered Telecommunications Equipment or Services that:
 - 1. *Are not used* as a Substantial or Essential Component of any system;
and
 - 2. *Are not used* as Critical Technology of any system.
 - b. Other telecommunications equipment or services that are not considered Covered Telecommunications Equipment or Services.

(4) *Reporting requirement.*

- i. In the event Provider identifies Covered Telecommunications Equipment or Services used as a Substantial or Essential Component of any system, or as Critical Technology as part of any system, during its performance under this Agreement, or Provider is notified of such by a Subcontractor at any Tier or by any other source, Provider shall report the information in paragraph ii. of this section to County, unless procedures for reporting the information are established elsewhere in this Agreement.
- ii. Provider shall report the following information pursuant to paragraph (4)i. of this section:
 - a. Within one (1) business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily

available information about mitigation actions undertaken or recommended.

- b. Within ten (10) business days of submitting the information in paragraph (4)ii.a. of this section: Any further available information about mitigation actions undertaken or recommended. In addition, Provider shall describe the efforts it undertook to prevent use or submission of Covered Telecommunications Equipment or Services, and any additional efforts that will be incorporated to prevent future use or submission of Covered Telecommunications Equipment or Services.

(5) *Subcontracts*. Provider shall insert the substance of this clause, including this paragraph (5), in all Subcontracts and other contractual instruments.

16. DOMESTIC PREFERENCE FOR PROCUREMENTS

As appropriate, and to the extent consistent with law, Provider should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to, iron, aluminum, steel, cement, and other manufactured products. Provider shall further cause any Subcontractor to include the requirements of this section in any Subcontracts.

For purposes of this clause:

Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

17. ACCESS TO RECORDS

- (1) Provider agrees to provide County, the Department of the Treasury, the Treasury Office of Inspector General, the Government Accountability Office, and the Comptroller General of the United States, or any other authorized representatives of these entities, access to any books, documents, papers, and records (electronic or otherwise) of Provider which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, transcriptions, or other investigations.
- (2) Provider agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

- (3) Provider agrees to retain all records covered by this section through December 31, 2031, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit, or other inquiry involving this Agreement.
- (4) Provider agrees to provide authorized representatives of the federal government access to construction or other work sites pertaining to the work being completed under this Agreement.
- (5) In compliance with Section 1225 of the Disaster Recovery Act of 2018, County and Provider acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by authorized representatives of the federal government.

18. CONFLICTS OF INTEREST; GIFTS AND FAVORS

- (1) Provider understands that: (1) County will use Fiscal Recovery Funds to pay for the cost of this Agreement, in whole or in part, and (2) the expenditure of Fiscal Recovery Funds is governed by County's Conflict of Interest Policy, Regulatory Requirements (including, without limitation, 2 C.F.R. § 200.318(c)(1)), and North Carolina law (including, without limitation, G.S. 14-234(a)(1) and -234.3(a)).
- (2) Provider certifies to County that as of the date hereof, to the best of its knowledge after reasonable inquiry, no employee, officer, or agent of County involved in the selection, award, or administration of this Agreement (each a "Covered Individual"); no member of a Covered Individual's immediate family; no partner of a Covered Individual; and no organization (including Provider) which employs or is about to employ a Covered Individual has a financial or other interest in, or has received a tangible personal benefit from, Provider. Should Provider obtain knowledge of any such interest or any tangible personal benefit described in the preceding sentence after the date hereof, Provider shall promptly disclose the same to County in writing.
- (3) Provider certifies to County that it has not provided, nor offered to provide, any gratuities, favors, or anything of value to an officer, employee, or agent of County. Should Provider obtain knowledge of the provision, or offer of any provision, of any gratuity, favor, or anything of value to an officer, employee, or agent described in the preceding sentence after the date hereof, Provider shall promptly disclose the same to County in writing.

19. ASSURANCES OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Provider and any Subcontractor, or the successor, transferee, or assignee of Provider or any Subcontractor, shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. §§ 2000d *et seq.*), as implemented by the Department of the Treasury's Title VI regulations, 31 C.F.R. Part 22, which are herein incorporated by reference and made a part of this

Agreement. Title VI also provides protection to persons with “Limited English Proficiency” in any program or activity receiving federal financial assistance, 42 U.S.C. §§ 2000d *et seq.*, as implemented by Treasury’s Title VI regulations, 31 C.F.R. Part 22, and herein incorporated by reference and made a part of this Agreement.

20. OTHER NON-DISCRIMINATION STATUTES

Provider acknowledges that County is bound by and agrees, to the extent applicable to Provider, to abide by the provisions contained in the federal statutes enumerated below and any other federal statutes and regulations that may be applicable to the expenditure of Fiscal Recovery Funds:

- (1) The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 *et seq.*), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
- (2) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
- (3) The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 *et seq.*), and Treasury’s implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
- (4) Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 *et seq.*), which prohibits discrimination on the basis of disability in programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

21. MISCELLANEOUS

- (1) *Increasing Seat Belt Use in the United States*. Pursuant to Executive Order 13043, 62 Fed. Reg. 19,216 (Apr. 18, 1997), County encourages Provider to adopt and enforce on-the-job seat belt policies and programs for its employees when operating company-owned, rented, or personally owned vehicles.
- (2) *Reducing Text Messaging While Driving*. Pursuant to Executive Order 13513, 74 Fed. Reg. 51,225 (Oct. 6, 2009), County encourages Provider to adopt and enforce policies that ban text messaging while driving.

22. SUSPENSION AND DEBARMENT

- (1) Due to its receipt of Fiscal Recovery Funds, County is a participant in a nonprocurement transaction (defined at 2 C.F.R. § 180.970) that is a covered transaction pursuant to 2 C.F.R. § 180.210 and 31 C.F.R. § 19.210. Therefore, this Agreement is a lower-Tier covered transaction for purposes of 2 C.F.R. Part 180 and 31 C.F.R. Part 19 if: (1) the

amount of this Agreement is greater than or equal to \$25,000 (2 C.F.R. § 180.220(b)(1); 31 C.F.R. § 19.220(b)(1)); (2) the Agreement requires the consent of an official of the Department of the Treasury (2 C.F.R. § 180.220(b)(2); 31 C.F.R. § 19.220(b)(2)); or (3) this Agreement is for federally required audit services (2 C.F.R. § 180.220(b)(3); 31 C.F.R. § 19.220(b)(3)).

- (2) If this Agreement is a covered transaction as set forth above, Provider hereby certifies as of the date hereof that Provider, Provider's principals (defined at 2 C.F.R. § 180.995), and the affiliates (defined at 2 C.F.R. § 180.905) of both Provider and Provider's principals are not excluded (defined at 2 C.F.R. § 180.935) and are not disqualified (defined at 2 C.F.R. § 180.935). If any of the foregoing persons are excluded or disqualified and the Secretary of the Treasury has not granted an exception pursuant to 31 C.F.R. § 19.120(a), (1) this Agreement shall be void, (2) County shall not make any payments of federal financial assistance to Provider, and (3) County shall have no obligations to Provider under this Agreement.
- (3) Provider must comply with 2 C.F.R. Part 180, Subpart C and 31 C.F.R. Part 19 and must include a requirement to comply with these regulations in any lower-Tier covered transaction into which it enters. This certification is a material representation of fact relied upon by County, and all liability arising from an erroneous representation shall be borne solely by Provider.
- (4) If it is later determined that Provider did not comply with 2 C.F.R. Part 180, Subpart C and 31 C.F.R. Part 19, in addition to remedies available to County, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

23. INDEMNIFICATION

Provider shall defend, indemnify and hold harmless County, its officers, officials, agents and employees from and against all actions, liability, claims, suits, damages, costs or expenses of any kind which may be brought or made against County or which County must pay and incur arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind in connection with or arising out of this Agreement and/or the performance hereof that are due in part or in the entirety of Provider, its employees or agents. Provider further agrees to investigate, handle, respond to, defend and dispose of same at its sole cost and expense. Provider shall be fully responsible to County for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by it. This Section shall survive any expiration or termination of this Agreement.

24. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

Provider acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Provider's actions pertaining to this Agreement.

25. NO OBLIGATION BY FEDERAL GOVERNMENT

The federal government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-federal entity, Provider, or any other party pertaining to any matter resulting from the Agreement.

26. MINORITY BUSINESS ENTERPRISES

- (1) If Provider intends to let any Subcontracts, Provider shall: (1) place qualified small and minority businesses and women's business enterprises on its solicitation lists; (2) assure that small and minority businesses and women's business enterprises are solicited whenever they are potential sources; (3) divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises; (4) establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women's business enterprises; (5) use the services and assistance, as appropriate, of the Small Business Administration, the Minority Business Development Agency of the Department of Commerce, and the North Carolina Office for Historically Underutilized Businesses.
- (2) For the purposes of this section, an entity shall qualify (1) as a "minority business" or "women's business enterprise" if it is currently certified as a North Carolina "historically underutilized business" under Chapter 143, Section 128.4(a) of the North Carolina General Statutes, and (2) as a "small business" if it is independently owned and operated and is qualified under the Small Business Administration criteria and size standards at 13 C.F.R. Part 21.

27. INSURANCE

Provider shall procure and maintain in full force and effect at all times and at its sole cost and expense Commercial General Liability, Commercial Automobile Liability, Professional Liability and Workers' Compensation insurance, if applicable, and any additional insurance as may be required by County with limits acceptable to County. All insurance policies (with the exception of Workers' Compensation, if applicable, and Professional Liability) shall be endorsed, specifically or generally, to include County as an additional insured and as a certificate holder. Provider shall furnish a Certificate of Insurance from a licensed insurance agent in North Carolina with a rating of A-VII or better by A.M. Best verifying the existence of any insurance coverage required by County. The Certificate will provide for thirty (30) days' advance notice in the event of termination or cancellation of coverage. Provider shall have no right of recovery or subrogation against County (including its officers, agents and employees), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the aforementioned insurance.

28. WORKERS' COMPENSATION

To the extent required by law, Provider shall comply with the North Carolina Workers' Compensation Act and shall provide for the payment of workers' compensation to its employees in the manner and to the extent required by such Act. In the event Provider is excluded from the requirements of such Act and does not voluntarily carry workers' compensation coverage, Provider shall carry or cause its employees to carry adequate medical/accident insurance to cover any injuries sustained by its employees or agents while fulfilling Provider's obligations under this Agreement.

Provider agrees to furnish County proof of compliance with said Act or adequate medical/accident insurance coverage upon request.

29. REMEDIES

- (1) **RIGHT TO COVER.** If Provider fails to meet any completion date or resolution time set forth, due to no fault of County, County may take any of the following actions with or without terminating this Agreement, and in addition to, and without limiting, any other remedies it may have:
 - i. Employ such means as it may deem advisable and appropriate to perform itself or obtain the Services from a third party until the matter is resolved and Provider is again able to resume performance under this Agreement; and
 - ii. Deduct any and all expenses incurred by County in obtaining or performing the Services from any money then due or to become due Provider and, should County's cost of obtaining or performing the Services exceed the amount due Provider, collect the amount due from Provider.
- (2) **RIGHT TO WITHHOLD PAYMENT.** County reserves the right to withhold any portion, or all, of a scheduled payment if Provider fails to perform under this Agreement until such breach has been fully cured.
- (3) **SETOFF.** Each party shall be entitled to set off and deduct from any amounts owed to the other party pursuant to this Agreement all damages and expenses incurred or reasonably anticipated as a result of the other party's breach of this Agreement.
- (4) **OTHER REMEDIES.** Upon breach of this Agreement, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently in addition to any other available remedy.
- (5) **NO SUSPENSION.** In the event that County disputes in good faith an allegation of breach by Provider, notwithstanding anything to the contrary in this Agreement, Provider agrees that it will not terminate this Agreement or suspend or limit any Services or warranties, unless: (i) the parties agree in writing; or (ii) an order of a court

of competent jurisdiction determines otherwise; provided, however, this dispute period shall be limited to ninety (90) days.

30. TAXES

Provider shall be responsible for paying all taxes, fees, assessments and premiums of any kind payable on its employees and operations. Provider shall substantiate, on demand by County, that all taxes and other charges are being properly paid.

31. HEALTH AND SAFETY

Provider shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with performing the Services. Provider shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees in connection with performing the Services and other persons who may be affected thereby.

32. NON-DISCRIMINATION IN EMPLOYMENT

Provider shall not discriminate against any employee or applicant for employment because of race, ethnicity, gender, gender identity, sexual orientation, age, religion, national origin, disability, color, ancestry, citizenship, genetic information, political affiliation or military/veteran status, or any other status protected by federal, state or local law or other unlawful form of discrimination. Provider shall take affirmative action to ensure that applicants are employed and that employees are treated fairly during employment. In the event Provider is determined by the final order of an appropriate agency or court of competent jurisdiction to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Agreement may be cancelled, terminated or suspended in whole or in part by County, and Provider may be declared ineligible for further County and/or federal government agreements.

33. COMPLIANCE WITH THE COPELAND “ANTI-KICKBACK” ACT

- (1) *Provider.* Provider and any Subcontractor performing work under this Agreement shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3, as may be applicable, which are incorporated by reference into this Agreement. County shall report all suspected or reported violations to Treasury.
- (2) *Subcontracts.* Provider or Subcontractor shall insert in any Subcontracts the clause above and such other clauses as Treasury may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower Tier Subcontracts. The prime contractor shall be responsible for the compliance by any Subcontractor or lower Tier Subcontractor with all of these contract clauses.
- (3) *Breach.* A breach of the Agreement clauses above may be grounds for termination of the Agreement, and for debarment as a contractor and Subcontractor as provided in 29 C.F.R. § 5.12.

34. COMPLIANCE WITH THE DAVIS-BACON ACT (AS AMENDED)

- (1) If applicable, all transactions regarding this Agreement shall be done in compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) and the requirements of 29 C.F.R. Part 5, as may be applicable. Provider shall comply with 40 U.S.C. §§ 3141-3144 and 3146-3148 and the requirements of 29 C.F.R. Part 5, as applicable.
- (2) Providers are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- (3) Additionally, Providers are required to pay wages not less than once a week.

35. CLEAN AIR ACT

- (1) Provider agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 *et seq.*
- (2) Provider agrees to report each violation to County and understands and agrees that County will, in turn, report each violation as required to Treasury and the appropriate Environmental Protection Agency Regional Office.
- (3) Provider agrees to include these requirements in each Subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by Treasury.

36. FEDERAL WATER POLLUTION CONTROL ACT

- (1) Provider agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.*
- (2) Provider agrees to report each violation to County and understands and agrees that County will, in turn, report each violation as required to Treasury and the appropriate Environmental Protection Agency Regional Office.
- (3) Provider agrees to include these requirements in each Subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by Treasury.

37. COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Compliance with the Contract Work Hours and Safety Standards Act:

- (1) *Overtime requirements.* No contractor or Subcontractor contracting for any part of the work under this Agreement which may require or involve the employment of Laborers or Mechanics shall require or permit any such Laborer or Mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in

such workweek unless such Laborer or Mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

- (2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (1) of this section, Provider and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Provider and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual Laborer or Mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) *Withholding for unpaid wages and liquidated damages.* County shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by Provider or Subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) *Subcontracts.* Provider or Subcontractor shall insert in any Subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the Subcontractors to include these clauses in any lower Tier Subcontracts. The prime contractor shall be responsible for compliance by any Subcontractor or lower Tier Subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.
- (5) *Payroll and Records.* Provider or Subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the Agreement for all Laborers and Mechanics, including guards and watchmen, working on this Agreement. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Records to be maintained under this provision shall be made available by Provider or Subcontractor for inspection, copying, or transcription by authorized representatives of the Department of the Treasury and the Department of Labor, and Provider or Subcontractor will permit such representatives to interview employees during working hours on the job.
- (6) *Exceptions.* None of the requirements of this section shall apply if this Agreement is an agreement: (1) for transportation by land, air, or water; (2) for the transmission of

intelligence; (3) for the purchase of supplies, materials, or articles ordinarily available in the open market; or (4) in an amount that is equal to or less than \$100,000.

38. RIGHTS TO INVENTIONS

- (1) The federal government reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for “Government purposes,” any subject data or copyright described below. “Government purposes” means use only for the direct purposes of the federal government. Without the copyright owner’s consent, the government may not extend its federal license to any other party.
 - i. Any subject data developed under this Agreement, whether or not a copyright has been obtained, and
 - ii. Any rights of copyright purchased by Provider using federal assistance funded in whole or in part by the Department of the Treasury.
- (2) Unless Treasury determines otherwise, a Provider performing experimental, developmental, or research work required as part of this Agreement agrees to permit Treasury to make available to the public either (1) Treasury’s license in the copyright to any subject data developed in the course of the Agreement, or (2) a copy of the subject data first produced under the Agreement for which a copyright has not been obtained. If the experimental, developmental, or research work which is the subject of this Agreement is not completed for any reason whatsoever, all data developed under the Agreement shall become subject data as defined herein and shall be delivered as the federal government may direct.
- (3) Unless prohibited by North Carolina law, upon request by the federal government, Provider agrees to indemnify, save, and hold harmless the federal government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by Provider of proprietary rights, copyrights, or right of privacy arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Agreement. Provider shall be required to indemnify the federal government for any such liability arising out of the wrongful act of any employee, official, or agent of Provider.
- (4) Nothing contained in this clause shall imply a license to the federal government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the federal government under any patent.
- (5) Data developed by Provider and financed entirely without using federal assistance provided by the federal government that has been incorporated into work required by the underlying Agreement is exempt from the requirements herein, provided that Provider identifies that data in writing at the time of delivery of the work. Provider

agrees to include these requirements in each Subcontract for experimental, developmental, or research work financed in whole or in part with federal assistance.

- (6) For the purposes of this section, “subject data” means “recorded information, whether or not copyrighted, . . . that is delivered or specified to be delivered as required by the contract.” Examples of “subject data” include, but are not limited to, “computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses or other similar information used for performance or administration of the contract.”

39. COMPLIANCE WITH E-VERIFY PROGRAM

Pursuant to N.C.G.S. § 143-133.3, Provider understands that it is a requirement of this Agreement that Provider and its Subcontractors must comply with the provisions of Article 2 of Chapter 64 of the North Carolina General Statutes. In doing so, Provider agrees that, unless it is exempt by law, it shall verify the work authorization of its employees utilizing the federal E-Verify program and standards as promulgated and operated by the United States Department of Homeland Security, and Provider shall require its Subcontractors to do the same. Upon request, Provider agrees to provide County with an affidavit of compliance or exemption.

40. CONFIDENTIAL INFORMATION

For purposes of this Agreement, the party disclosing Confidential Information is the “Discloser,” and the party receiving Confidential Information is the “Recipient.” “Confidential Information” shall mean any nonpublic information concerning the parties’ respective businesses including, but not limited to, all tangible, intangible, visual, electronic, present or future information such as: (a) trade secrets; (b) financial information, including pricing; (c) technical information, including research, development, procedures, algorithms, data, designs and know-how; (d) business information, including operations, planning, marketing interests and products; and (e) the terms of any agreement between the parties and the discussions, negotiations and proposals related thereto. Confidential Information disclosed to the other party must be clearly identified. Written Confidential Information must be clearly marked in a conspicuous place with an appropriate legend identifying the information as “Confidential.” Confidential Information that is not written must be identified as confidential at the time of disclosure and confirmed in writing delivered to Recipient within fifteen (15) days of disclosure.

The restrictions regarding the use and disclosure of Confidential Information do not apply to information that is:

- (1) in the public domain through no fault of the Recipient;
- (2) within the legitimate possession of the Recipient, with no confidentiality obligations to a third party;
- (3) lawfully received from a third party having rights in the information without restriction, and without notice of any restriction against its further disclosure;

- (4) independently developed by the Recipient without breaching this Agreement or by parties who have not had, either directly or indirectly, access to or knowledge of the Confidential Information;
- (5) disclosed with the prior written consent of the Discloser; or
- (6) required to be disclosed by law, regulation or court or governmental order, specifically including requests pursuant to the Public Records Laws of North Carolina contained in Chapter 132 of the North Carolina General Statutes. In the event Recipient receives such a request, it shall notify Discloser and Discloser shall have the opportunity to defend against production of such records at Discloser's sole expense.

41. OWNERSHIP OF WORK PRODUCT

Should Provider's performance under this Agreement generate documents or other work product that are specific to the Services hereunder, such documents or work product shall become the property of County and may be used by County on other projects without additional compensation to Provider.

42. NO ASSIGNMENT WITHOUT CONSENT

Neither party shall assign this Agreement (or assign any right or delegate any obligation contained herein whether such assignment is of service, of payment or otherwise) without the prior written consent of the other party hereto. Any such assignment without the prior written consent of the other party hereto shall be void. An assignee shall acquire no rights, and County shall not recognize any assignment in violation of this provision.

43. GOVERNING LAW AND VENUE

This Agreement shall be governed by applicable federal law and by the laws of the State of North Carolina without regard for its choice of law provisions. All actions relating in any way to this Agreement shall be brought in the General Court of Justice of the State of North Carolina in Brunswick County or in the Federal District Court for the Eastern District of North Carolina, Wilmington division.

44. DISPUTE RESOLUTION

Should a dispute arise as to the terms of this Agreement, both parties agree that neither may initiate binding arbitration. The parties may agree to non-binding mediation of any dispute prior to the bringing of any suit or action.

45. GOVERNMENTAL IMMUNITY

County, to the extent applicable, does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.

46. NON-WAIVER

Failure by County at any time to require the performance by Provider of any of the provisions of this Agreement shall in no way affect County's right hereunder to enforce the same, nor shall any waiver by County of any breach be held to be a waiver of any succeeding breach or a waiver of this Section.

47. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties with respect to the subject matter herein. There are no other representations, understandings or agreements between the parties with respect to such subject matter. This Agreement supersedes all prior agreements, negotiations, representations and proposals, written or oral.

48. HEADINGS

The headings in this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

49. SEVERABILITY

The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity of the remaining portion of the Agreement so long as the material purposes of this Agreement can be determined and effectuated. If a provision of this Agreement is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

50. AMENDMENTS

Amendments or changes to this Agreement, or additional Proposals or Statements of Work, shall not be valid unless in writing and signed by authorized agents of both Provider and County.

51. NOTICES

- (1) **DELIVERY OF NOTICES.** Any notice, consent or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by facsimile to the intended recipient at the address set forth below.
- (2) **EFFECTIVE DATE OF NOTICES.** Any notice shall be effective upon the date of receipt by the intended recipient; provided that any notice which is sent by facsimile or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier.

(3) **NOTICE ADDRESS.** Communications that relate to any breach, default, termination, delay in performance, prevention of performance, modification, extension, amendment or waiver of any provision of this Agreement shall be sent to:

- i. For the County: Brunswick County Manager
P.O. Box 249
Bolivia, NC 28422
Fax: 910-253-2022
- ii. For the Provider: {Vendor Name}
{Vendor Address}
{Vendor City}, {Vendor State or Territory} {Vendor Zip}

52. SIGNATURES

This Agreement, together with any amendments or modifications, may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be considered one and the same agreement. This Agreement may also be executed electronically. By signing electronically, the parties indicate their intent to comply with the Electronic Commerce in Government Act (N.C.G.S § 66-58.1 et seq.) and the Uniform Electronic Transactions Act (N.C.G.S § 66-311 et seq.). Delivery of an executed counterpart of this Agreement by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

ATTEST:

BRUNSWICK COUNTY

Clerk to the Board

By: _____
Chairman, Board of Commissioners

[SEAL]

{VENDOR NAME}

By: _____

Printed Name: {Vendor Signatory Name}

Title: {Vendor Signatory Title}

Date: _____

“This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.”

Aaron C. Smith, Director of Fiscal Operations
Brunswick County, North Carolina

APPROVED AS TO FORM

Robert V. Shaver, Jr., County Attorney /
Bryan W. Batton, Assistant County Attorney

EXHIBIT “A”
PROPOSAL/STATEMENT OF WORK/SCOPE OF SERVICES

[TBD]



BRUNSWICK COUNTY MINIMUM INSURANCE COVERAGE REQUIREMENTS

At contractor's expense, contractor shall procure and maintain the following recommended lines of insurance according to the scope of work. The County may choose to elect higher or lower coverages according to the work performed. Contractors must be insured by a licensed agent in North Carolina and rated A-VII or better by A.M. Best.

A. COMMERCIAL GENERAL LIABILITY

Covering all operations involved in this Agreement.

\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations Aggregate
\$1,000,000 Each Occurrence
\$1,000,000 Personal and Advertising Injury Limit
\$ 5,000 Medical Expense Limit

B. WORKERS' COMPENSATION

Statutory limits covering all employees, including Employer's Liability with limits of:

\$500,000 Each Accident
\$500,000 Disease - Each Employee
\$500,000 Disease - Policy Limit

C. COMMERCIAL AUTOMOBILE LIABILITY

\$1,000,000 Combined Single Limit – Any Auto

D. PROFESSIONAL LIABILITY

\$1,000,000 Per Occurrence

E. POLLUTION LIABILITY INSURANCE

\$1,000,000 Per Occurrence

When a contractor is required to bind pollution/environmental coverage, the contractor must provide evidence of continuation or renewal of liability insurance for a period of three (3) years following termination of the agreement.

ADDITIONAL INSURANCE AND INDEMNIFICATION REQUIREMENTS

- A. Contractor agrees to defend, indemnify, and hold harmless Brunswick County, its officers, employees, and agents from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees, or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind in connection with or arising out of this Agreement and/or the performance hereof that are due in part or in the entirety of Contractor, its employees or agents. Contractor further agrees to investigate, handle, respond to, defend and dispose of same at its sole expense and agrees to bear all other costs and expenses related thereto.

The Contractor's General Liability policy shall be endorsed, specifically or generally, to include the following as Additional Insured:

BRUNSWICK COUNTY, ITS OFFICERS, AGENTS AND EMPLOYEES ARE INCLUDED AS
ADDITIONAL INSURED UNDER CONTRACTOR'S GENERAL LIABILITY INSURANCE.

- A. Before commencement of any work or event, Contractor shall provide a Certificate of Insurance in satisfactory form as evidence of the insurances required above.
- B. Contractor shall have no right of recovery or subrogation against Brunswick County (including its officers, agents and employees), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance.
- C. Brunswick County shall have no liability with respect to Contractor's personal property whether insured or not insured. Any deductible or self-insured retention is the sole responsibility of Contractor.
- D. All certificates of insurance must provide that the policy or policies shall not be changed or cancelled without at least thirty (30) days prior written notice.
- E. The Certificate of Insurance should note in the Description of Operations the following:
Department: _____
Contract #: _____
- F. Insurance procured by Contractor shall not reduce nor limit Contractor's contractual obligation to indemnify, hold harmless and defend Brunswick County for claims made or suits brought which result from or are in connection with the performance of this Agreement.
- G. In the event Contractor receives Notice of Cancellation of Insurance required pursuant to this Agreement, Contractor shall immediately cease performance of all services and shall provide Notice to Brunswick County's Legal/Risk Management personnel within twenty-four (24) hours.
- H. Certificate Holder shall be listed as follows;
ATTENTION: Brunswick County Risk Manager
30 Government Center Dr. NE
P.O. Box 249
Bolivia, NC 28422
- I. If Contractor is authorized to assign or subcontract any of its rights or duties hereunder and in fact does so, Contractor shall ensure that the assignee or subcontractor satisfies all requirements of this Agreement, including, but not limited to, maintenance of the required insurances coverage and provision of certificate(s) of insurance and additional insured endorsement(s), in proper form prior to commencement of services.

FORM OF PROPOSAL

Lead and Copper Compliance Program Management

<u>Item</u>	<u>Description</u>	<u>Lump Sum Price</u>		
<i>Services – Lump Sum Pricing</i>				
1	Lead Service Lateral (LSL) Inventory	\$		
2	Lead Service Lateral Replacement Program	\$		
3	Sampling Monitoring Program (services only; excluding sampling kits and sample analysis)	\$		
4	Public Education and Outreach Program (services only; excluding pitchers, filters, etc.)	\$		
5	Technical Implementation and Support	\$		
A	Subtotal (Items 1-5)	\$		
NOTE: All lump sum amounts above are to be inclusive of labor, materials (unless otherwise listed separately), equipment, incidentals, etc. necessary to provide the Scope of Work outlined herein.				
<u>Item</u>	<u>Description</u>	<u>Quantity/ Units</u>	<u>Fixed Unit Price</u>	<u>Total Price</u>
<i>Materials – Fixed Unit Pricing</i>				
6	Identify “Lead-Status-Unknown” Service Laterals	1000	\$	\$
7	Sampling Kits (inclusive of all shipping and handling charges)	1000	\$	\$
8	Sample Analysis (inclusive of all shipping and handling charges)	1000	\$	\$
9	Filters and pitchers (inclusive of all shipping and handling charges)	500	\$	\$
B	Subtotal (Items 6-9)		\$	\$
	GRAND TOTAL (ITEMS A AND B)		\$	
NOTE: Unit prices quoted above shall be firm for the duration of the awarded contract. Contractor acknowledges that quantities are approximate only and are provided as a basis for comparison of pricing. Brunswick County may increase or decrease the quantity of any item as may be deemed necessary. An increase or decrease in the quantity of any item will not be regarded as sufficient grounds for an increase or decrease in the unit prices.				

CONTRACTOR INFORMATION

Name of Company _____

Address _____

Phone No. _____ Fax No. _____

E-Mail Address _____

Federal I.D. No. _____

SDBE, Minority or Woman Owned Business Enterprise _____Yes _____No

Proposal Submitted By: _____
(Printed Name)

(Signature)

Title: _____

Date: _____